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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 454

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1–9) is reported at 246 F. 2d 155. The memorandum opinion of District Judge Platt denying the motion for new trial (R. 1064–1068) is reported at 143 F. Supp. 442. The memorandum opinion of Judge Adair (R. 1041–1044) granting a motion in arrest of judgment is reported at 135 F. Supp. 162. The opinion of this Court reversing that order and remanding the cause for further proceedings is reported at 350 U. S. 415.

JURISDICTION

The judgments of the Court of Appeals were entered on July 9, 1957 (Pet. App. 10–11), and a petition for rehearing was denied on August 13, 1957 (Pet. App. 12). The petition for a writ of certiorari was filed on September 12. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the two courts below properly found the evidence sufficient to support the verdict.

2. Whether the court's unchallenged charge to the jury relative to proof of intent under the Hobbs Act (18 U. S. C. 1951) was erroneous.

STATUTE INVOLVED

18 U. S. C. 1951 provides:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> (b) As used in this section—
>
> (1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the

person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45.

STATEMENT

On September 24, 1954, petitioners were convicted (R. 1028–1029) under the first and second counts of a nine-count indictment (R. 7–15) charging that they had obstructed interstate commerce and attempted to do so by extortion, in violation of 18 U. S. C. 1951.[1] The property alleged to have been demanded of two contractors through the unlawful use of force and fear was money in the form of wages to be paid for im-

[1] Counts 3, 5, 6, 7, and 8 were dismissed on the election of the Government after trial (R. 924–925, 1015). Petitioners were acquitted by the jury on counts 4 and 9 (R. 1028–1029).

posed, unwanted, superfluous and fictitious services of laborers, commonly known as swampers, in connection with a contract for the maintenance of a levee bordering the Chain of Rocks Canal, a channel for traffic on the Mississippi River and its tributaries. Following the verdict, District Judge Adair denied the petitioners' motions for acquittal and for a new trial, but granted their motions in arrest of judgment on the ground that 18 U. S. C. 1951 did not apply to the facts alleged in the indictment (R. 1041–1046). On appeal by the Government, this Court reversed the order of the district court and remanded the cause for proceedings in conformity with its opinion, holding that the allegations of the indictment stated an offense under 18 U. S. C. 1951. *United States v. Green,* 350 U. S. 415.

On remand, the case was assigned to District Judge Platt under Rule 25, F. R. Crim. P., since Judge Adair had died while the case was being appealed. Acting under the power given him by Rule 25, F. R. Crim. P., Judge Platt reviewed the evidence and, in an opinion dated August 24, 1956, found it legally sufficient to establish the charges contained in the first and second counts of the indictment (R. 1064–1068; 143 F. Supp. 442). On August 24, 1956, Judge Platt entered judgments against both petitioners, sentencing petitioner Green to the payment of a $3,000 fine and a suspended sentence of three years' imprisonment (R. 1069–1070), and petitioner Union to a fine of $3,000 (R. 1072). On appeal to the Court of Appeals for the Seventh Circuit, the judg-

ment as to each petitioner was affirmed (Pet. App. 1–11).

The evidence in support of the judgments appealed from may be summarized as follows:

On February 9, 1953, the Chain of Rocks Canal, located north of East St. Louis, Illinois, was opened for commerce by the United States Army Corps of Engineers. This eight-mile canal was built to bypass rock ledges in the Missouri River which were a hazard to navigation, and was designed to accommodate about a million tons of shipping per month (R. 71–79, 92–93). An essential part of the project were levees along the canal which controlled erosion and prevented blockage in the nine-foot channel. The St. Louis District of the Corps of Engineers was responsible for the maintenance of these levees, particularly the filling-in of shallow gullies on the levee slopes before serious erosion could occur. This operation required the use of bulldozers and tractors with scoops to move dredged sand and silt from the base of the levee to the erosion gullies on the slopes (R. 73, 80–81, 86–87, 121, 167, 181, 210, 406, 436). The Corps of Engineers entered into various "equipment rental" contracts under which the Government hired both equipment and men to do the work under the direction of the Engineers. The contracts were usually given to small contractors who had only a few pieces of equipment (R. 85–87, 108, 130, 406).

The two contractors involved in this case, Arthur W. Terry and Ralph W. Wright, Jr. (operating as the Midway Excavating Company), entered into such contracts with the Corps of Engineers (R. 81–82, 129, 219,

249, 404). Wright began performance of his contract in October 1952 and, with normal interruptions due to adverse weather, continued until March 26, 1953. Terry began his work March 1, 1953, and proceeded almost continuously until March 26, 1953 (R. 130, 137, 249, 255, 405).

Both Wright and the operators of the equipment of the two contractors belonged to or worked under a permit from Local 520 of the Operating Engineers Union in East St. Louis, Illinois (R. 120, 123–124, 129, 166, 178–179, 207). Laborers working in that area (as distinguished from operating engineers) worked under the jurisdiction of petitioner, Local 397 of Granite City, Illinois, a union affiliated with the International Hod Carriers Building and Common Laborers' Union of America, which, although having a membership of only 150 to 170 members, had jurisdiction also of approximately 1,100 members of other locals employed in the area who paid dues and were required to cooperate with the petitioner Union (R. 866–868). Petitioner Green was the business representative of the petitioner Union (R. 810–811). One type of general laborer under the jurisdiction of the petitioner Union was the "swamper", who would go ahead of a bulldozer or tractor in order to spot obstacles such as timber and deep holes in its path (R. 148–150, 200). No "swampers" were employed by the two contractors in connection with this operation (R. 495) since no "swamping" work was needed (R. 136, 145, 276, 408–409, 922). Since the equipment was being used in sand and silt, there was no need for a laborer to clean the tracks (R. 256, 278,

437, 452, 917–920), or perform other tasks in connection with the operation and maintenance of such equipment (R. 148–149).

On March 23, 1953, petitioner Green visited the site where Wright's employee, Luhning, was operating a tractor-scoop unit, and asked him where his "swamper" was. When Luhning told petitioner that he had none, petitioner said to have his boss meet petitioner on the levee, the next day at noon (R. 120–122, 125). The next day, Wright appeared on the job but Green did not (R. 122, 132–133, 143–144). At about 10 o'clock a. m., on March 26, however, as Luhning was operating his tractor-scoop unit, six men approached him. When, in answer to their questions, he told them he did not have a laborer, they told him to park his "cat" (caterpillar tractor) until he had a laborer (R. 122–123). After being informed of this development, Wright visited petitioner's office in Granite City, Illinois, and asked him what the trouble was. Petitioner replied that they (R. 135) "needed a man out there with that 'cat' and scoop." Wright told petitioner that there was no need for a laborer on the job, and if he had to have one he would move his tractor out. When petitioner told him, "That is the thing to do," Wright moved out his equipment and ceased work on the contract (R. 136).

On March 26, 1953, the same day the Wright incident occurred, Terry had a bulldozer and a tractor-scoop unit in operation filling in "wash-outs" on the levee. Apparently at approximately the time of the appearance of the men at the Wright work site, six

men arrived at the Terry location. After ascertaining that neither of the two operators was using "swampers", they told Terry's foreman, Clifton, that they wanted to put a "swamper" on the tractors. When Clifton told them he did not have authority to hire (R. 205), "they said they would shut the job down." They told the operators to discontinue their work. Both operators acceded to this demand, and work was not resumed by Terry until April 13, 1953 (R. 168–171, 175, 186, 409–411). One of the operators, William Feche, stated as his reason for stopping work that day (R. 187):

> If it was one individual, I wouldn't have stopped. I would have questioned it a little bit. But there was—oh, five or six fellows that was up on the berm or up on the top of the levee, and he asked me to stop, and I just let it go through my mind what could have happened, and I stopped.

A short time prior to April 13, 1953, Terry received a communication from the Corps of Engineers that, unless he proceeded with the work, his contract would be subject to cancellation (R. 223–224, 225, 257). Terry reported the events of March 26 to the Federal Bureau of Investigation (R. 225, 258), and, on April 12, 1953, hired two police officers from St. Louis County, Missouri, to act as his personal bodyguard and protect his men from further disturbance. Then he and the two bodyguards, Zinn and Florence, went to the sheriff's office in Edwardsville, Illinois, reported the situation, and asked for protection (R. 226–227, 232, 257, 259, 287–288, 308, 521–522). During the after-

noon and evening of that day, Terry attempted to reach petitioner Green by telephone but was unsuccessful (R. 227–228).

On the morning of April 13, 1953, Terry proceeded to the work site with his bodyguard and a new operator, Voyles, who held a permit from Local 520 of the Operating Engineers (R. 207–211, 229, 420). Terry called petitioner Green from a restaurant near the work site. When he told Green he could not afford a laborer on each tractor, Green replied, "Well, you put a laborer on them if you are going to start them" (R. 231). When asked what he was going to do, Green said, "I will stop you," and when asked how, he answered, "You'll see." When told there was no need for a swamper on each machine, Green said, "Well, let them carry water for the operator when he gets thirsty." Green insisted he would not permit one laborer for the whole job and that there had to be a laborer for each tractor (R. 231).

Terry then told the new operator to start work with his tractor-scoop unit (R. 231–232), and Karl Lehmann, the government inspector for the Corps of Engineers who was in charge of the operation, showed the new operator what to do (R. 277, 421). Terry, who remained on the scene in a car with his two bodyguards, was joined by a deputy sheriff from Edwardsville, Illinois, about 8:15 or 8:30 a. m. (R. 234). While the men were waiting, petitioner Green drove up in a Cadillac, spoke briefly with the deputy sheriff and then left (R. 234, 236–237, 295). The deputy, thinking the situation more than he could handle, called the sheriff's office, and the sheriff

and three additional deputies arrived on the site about 9:30 a. m. (R. 235, 525–528) in order to prevent violence (R. 563).

Meanwhile, a message was circulated at various industrial plants in the area by Skeen (a shop steward and the vice-president of petitioner Union (R. 445)) and others, advising that all laborers under the jurisdiction of petitioner Union were to walk off their job and assemble at the union hall (R. 321–322, 326–327, 330–331, 339–340, 344, 354, 360).[2] The large group of men (including about 395 men from the Granite City Steel Company and about 145 men from the Austin Construction Company working at the Dow Chemical Plant (R. 158, 163–164, 165)) assembled at the union hall where they were met by Green (R. 322–323, 339–340, 355, 361). There, a convoy of automobiles was formed and the assemblage of laborers drove to the site of the Terry levee project (R. 323).

The group, estimated by Terry as 1,500 men (R. 236), by government inspector Lehmann as 700 (R. 425), and as a smaller group by others (R. 212–214, 296), left their cars near the site, assembled for about 45 minutes (R. 236, 423), and then proceeded as a body up the levee toward Terry's parked car and a parked truck of government inspector Lehmann. Below them, Terry's tractor-scoop unit was being operated by Voyles. On reaching Voyles' ma-

[2] When asked why the men had left (R. 159, 164), Green in response to one inquiry said (R. 159):

"I have them down here for a little meeting, and we have a job to do, just knock them off the payroll and they will be back. It won't take long. * * * It has nothing to do with your job."

chine, one of the men suggested (R. 424): "Let's circle that tractor", and part of the group crowded around Voyles' machine so that it could not move. One of the men said to Voyles (R. 215), "Put up your hand, that is it", and Voyles shut off his motor. Voyles asked the men if he could take the tractor up on the levee and they said "No" (R. 215). The men surrounded, in similar fashion, a government truck driven by the lead foreman of the Corps of Engineers who was attempting to drive down the ramp of the levee, but on an order of one of their number to (R. 400) "Let that truck go," the truck was allowed to proceed.

As the men approached Terry's car, government inspector Lehmann heard the men yell (R. 425), "Jack wants this car circled." They told Terry, who was standing nearby, that "they had orders from Green" not to let him get into his car (R. 237). The crowd of men thereupon surrounded him and Zinn, one of his bodyguards, so closely that they could not move unless they forcibly tried to push them out of the way which, according to Terry, they were afraid to do. Petitioner Green had, in the meanwhile, gone over to the sheriff's car to talk with him and his deputies. The sheriff then approached Terry and said (R. 238), "Terry, you better get out of here before you get killed," whereupon one of the men in the crowd said, "He's not going anywhere until Green says he can." One of the deputies told the crowd encircling Terry's car to "Let this car go," but the men paid no attention (R. 425).

Petitioner then came over to where Terry was surrounded by the men and said (R. 239–240):

> * * * I'm running you out of business. You are out of business as of right now. I don't care whether you are on the East Side or on the West Side.

Government inspector Lehmann heard petitioner Green tell Terry (R. 426) "that he could bring all the guns and all of the goons he wanted over there and he would give him all of the competition he wanted," and also "to get across the river and stay there." When Green told the men to let them go, Terry and Zinn attempted to get to their car. One of the men, however, struck at Terry, and then two or three others approached as though to strike him while others cursed and shoved him (R. 240, 315, 427). When Terry and Zinn reached and entered the car, one of the men said (R. 241), "You had better get on out of here while you can." The men then began to kick and hit his car, and another man suggested that they throw it in the canal (R. 241, 317, 429, 552). Terry was, however, able to drive off. Terry's other bodyguard, Florence, whom he had to leave behind in the crowd, was able to get away in the car of a deputy sheriff (R. 241–242, 266–267, 561).

Both Terry and Wright were unable to resume their work under the contracts. The Gorham Company took over the entire maintenance project on April 23, 1953, and completed it on May 21, 1953 (R. 448). Petitioner Green admitted that there had been "a scuffle" at the job site (R. 859). He contended, however, that the walk-out of the laborers was com-

pletely spontaneous, that the activities at the job site were not under union auspices, and were not union picketing or a union-sponsored activity (R. 848–852, 882).

ARGUMENT

1. Petitioners admit the use of threats. They admit, also, that the services of swampers were "unnecessary" (Pet. 13). They attempt, however, to draw a distinction between "unnecessary" and "fictitious," and argue that the evidence is insufficient because it does not show that the services of swampers could not have been performed.

First, the argument has no basis in fact in this case. The evidence (*supra*, pp. 6–7) shows that there was no genuine work for swampers on this particular job. The judge in his charge to the jury, after explaining the various counts (R. 1015–1017), told the jury they must determine (R. 1018) "whether or not this man, the swamper, or the man that was requested that they employ, was an unnecessary party, was only an attempt on the part of some person or persons defendant in this suit to obtain money from the contractor for services that were not warranted." The jury thus had to find that the "services" sought to be forced on the contractors by threats of violence were not only unwanted, but were also unnecessary or fictitious in the sense of having no value or utility to the contractors. There is no real distinction between "unnecessary" and "fictitious" in this context.

Actually, what petitioners are seeking to do is to reargue the prior decision of this Court in this case, 350 U. S. 415. Referring to the earlier case of

United States v. *Local 807*, 315 U. S. 521, which had held that the *predecessor* section did not apply to force and violence used to compel employment of "superfluous services" (see 350 U. S. at p. 419), this Court stated on the prior appeal (p. 420):

> The city truckers in the Local 807 case *similarly* were trying by force to get *jobs* and pay from the out-of-state truckers by threats and violence. *The Hobbs Act was meant to stop just such conduct.* [Emphasis added.]

The conduct here proved was clearly within the scope of the Hobbs Act as definitively interpreted by this Court.[3]

2. After defining the elements of the offense charged, the trial judge charged, as quoted above, that it was necessary for the jury to determine whether the swamper was an "unnecessary party" attempting to get money for unwarranted services. He then said (R. 1018):

> It is necessary in a case of this sort that the Government show by evidence that this action was knowingly done, in violation of the law, and was wilfully done, intentionally done.
>
> Now you may consider from the inference of testimony whether or not you believe those facts to be true. It isn't necessary at all times to prove by direct proof of a certain act or a certain thing, but from the inference, the general inference from the whole, if you believe

[3] The Government's brief on the prior appeal (No. 54, Oct. Term, 1955) assumed throughout that the indictment presented, and the Hobbs Act covered, wages paid, under the threat of force, to supernumeraries or unnecessary workers. See *e. g.*, Brief for the United States, pp. 15–16, 17–18, 32–33.

> that this was an act that was wilfully and knowingly committed with the intention to affect commerce in that particular district, that may be considered by you without direct testimony in regard to it.

Subsequently, he told the jury that the Government must prove beyond a reasonable doubt that petitioners, by threats of violence, were "attempting or endeavoring to force A. W. Terry, Jr. or Ralph Wright, Jr. to employ and impose unwanted, superfluous, fictitious, or unnecessary laborers to work in the performance of his contract" (R. 1020–1021).

After the conclusion of his charge, the judge said (R. 1021):

> It has been suggested to me that perhaps I did not make myself clear on the question of intent.
>
> Any person may be supposed to intend—intend the reasonable and probable consequences of an act performed. That is, you don't have to make up your minds right when it is being done, have the intent of it, but if an act performed would result in a certain condition, then intent may be presumed.

Although admitting that no objection was made, petitioners contend that this charge, particularly the last portion, constitutes plain error which the court below should have noted under Rule 52, F. R. Crim. P. The contention is that it permitted the jury to find guilt on a "general intent", rather than a "specific intent" (Pet. 17–19).

The judge, however, was very specific in stating the necessity of finding the intent "to affect commerce

in that particular district" (R. 1018), and the necessity of finding that petitioners, by threats of violence, attempted to force the employment of unwanted, superfluous and unnecessary laborers (R. 1020–1021). There was no possibility, under the charge as a whole, that the jury could have found petitioners guilty on some general plan of wrongdoing. To find the elements of the offense, the jury had to find the specific intent condemned by the statute.[4]

The last portion of the charge, discussing proof of intent, is in amplification of the brief charge on circumstantial evidence (R. 1018). It was clearly correct. As this Court said in *Cramer* v. *United States*, 325 U. S. 1, 31, "What is designed in the mind of an accused never is susceptible of proof by direct testimony," and "intent must be inferred from conduct of some sort." And as the court below observed (Pet. App. 7), it is "axiomatic that a person is held to intend the natural consequences of his acts." See *Cramer* v. *United States*, 325 U. S. 1, 31; *Agnew* v. *United States*, 165 U. S. 36, 50; *McKenna* v. *United States*, 232 F. 2d 431, 437 (C. A. 8); *House* v. *United States*, 78 F. 2d 296, 301 (C. A. 6), certiorari denied, 296 U. S. 608; *Dunlap* v. *United States*, 70 F. 2d 35, 37 (C. A. 7), certiorari denied, 292 U. S. 653.

[4] In *Morissette* v. *United States*, 342 U. S. 246, relied on by petitioners, the statute contained no definition of the intent element requisite to proof of the crime, and the court instructed the jury that they could presume intent from the fact of a taking of government property, an act which, under the defense theory that the property was abandoned, might have been a purely innocent one.

CONCLUSION

The case was decided in accordance with established legal principles, and there is no conflict in decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1957.

U. S. GOVERNMENT PRINTING OFFICE 1957